IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CR-03-075-RAW
	)	
MICHAEL DALE CHRISTIAN,	)	
	)	
Defendant.	)	

ORDER

Before the court is the motion of the defendant for reduction of sentence pursuant to

18 U.S.C. §3582(c)(2). First, the government argues that the motion should be dismissed

because defendant's plea agreement waived collateral attack on his sentence. The court

disagrees. The Tenth Circuit holds that such a waiver does not apply to §3582(c) motions.

See United States v. Chavez-Salais, 337 F.3d 1170, 1173-74 (10th Cir.2003). The rationale

is that such motions do not "contest" the original sentence but rather bring to the court's

attention changes in the Guidelines that allow a sentence reduction.

The court does, however, agree with the government's argument on the merits of the

motion. Defendant relies upon Amendment 484 (effective November 1, 1993) and

Amendment 591 (effective November 1, 2000)[*]. Defendant was sentenced on March 18,

2004. Thus, defendant is not entitled to sentence modification because there was no

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[*]The relevant policy statement on retroactive reduction of sentences [U.S.S.G. §1B1.10(a)] provides that a sentence reduction is authorized under §3582(c)(2) only where the applicable guideline range was lowered as a result of an amendment to the Guidelines Manual enumerated under §1B1.10(c). There is no dispute that Amendments 484 and 591 are so enumerated.

pertinent change to the Guidelines made <u>after</u> his sentencing. *See United States v. Herrera-Garcia,* 422 F.3d 1202, 1203 (10th Cir.2005).

To the extent defendant raises other challenges to his sentence, these do fall within his plea waiver and are also not properly brought in a §3582 motion.

It is the Order of the court that the motion of the defendant (#75) is hereby DENIED.

ORDERED THIS 8th DAY OF JUNE, 2010.

Dated this 8th Day of June 2010.

Ronald A. White
United States District Judge
Eastern District of Oklahoma

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